



Insurance Revisited – The Shariah View

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All praise be to Allah, creator of the heavens and the earth, and owner of the Day of Judgement. I bear witness that there is no-one worthy of worship other than Allah (SWT), and that The Prophet Mohammed (SAW) is his final messenger.

This paper covers the following;

- *Introduction*
- *Nature Of Insurance*
- *Historical Origins Of Insurance*
- *Potential Islamic Objections To Insurance (including counter-arguments)*
- *Towards mutually accepted Shariah-Compliant Insurance*
- *Summary & Conclusions*

Few subjects have caused such controversy and commotion both amongst the general Muslim Community and Muslim jurists as has the topic Insurance. The theory of co-operation, turned global profit industry sits at the very heart of the capitalist economy allowing business entrepreneurs to effectively manage and take calculated risks. Naturally then such an indispensable business catalyst was always going to be subject to such close scrutiny by the Ulema.

Most Ulema have historically rejected insurance on the basis of its involvement with Interest, Gambling and other social ills. Meanwhile other Ulema have been more concerned with the nature of the insurance contract pointing to deficiencies in its theoretical construct and practical application. These scholars have forwarded that Insurance is riddled with *Gharar* (gross uncertainty) and *Maisar* (to be defined later). As such, these scholars feel it does not fit an acceptable form of contract within Islamic Jurisprudence.

In recent times though, numerous other scholars have written respectable literature on the need to reassess the basis of the old prohibition. These contemporary scholars have argued that Insurance is neither a form of gambling nor is it an activity which inherently promotes interest. Furthermore they assert that it cannot be construed as prohibited simply because it does not fit neatly into any prevailing form of Islamic financial contract. The aim of this paper is to review both the basis of argument by the traditional Ulema in their objections, whilst simultaneously reviewing the counter-

arguments advanced by contemporary scholars to present Insurance in a more acceptable light. We will also have a look at alternatives to the current system forwarded by both parties.

NATURE OF INSURANCE

A standard dictionary definition of Insurance is '*to cover, to indemnify or to assure*'. Not particularly sinister from a Shariah viewpoint. The modern day insurance contract tends to provide cover against loss or damage to valuable assets. The subject matter of the contract can even include a life, and is not restricted purely to material concerns. Often the time period for cover is specified at inception as a number of years, and can even be the *whole of life*. The customer normally pays a premium for the lifetime of the contract. If loss/damage/death occurs during the contract period, the customer receives the pre-agreed sum assured (level of cover) from the insurance company. If however no such incidents occur then the customer usually receives no financial compensation or return. One though cannot discount the intangible benefit of security and peace of mind that the client has received over the contract period, by virtue of his premium. Insurance is therefore effectively the sale of risk to the insurance company in exchange for a premium paid. These days insurance is big business and just about anything can be insured including cars, homes, lives, businesses, liabilities, property and even pets.

The cornerstone of the principle of Insurance lies in the '*law of large numbers*'. This states that whilst it is not possible to predict the exact outcome of any given situation at any one point in time, it is possible though to ascertain with reasonable accuracy the pattern of outcomes over a period of time via a large enough sample of incidents. With such valuable analysis, society can determine *how many accidents will occur, for example every year on a certain road*, even though it may not be possible to accurately predict the number of accidents on that same road in a given hour. The law of large numbers then allows this analysis to form the basis of business strategy by working out the average number of accidents per year, multiplied by the average cost per accident. The latter then represents the total cost of claims to a potential Insurer. The Insurer can then work out the cost of total premiums required to cover the expected claims in addition to adding in administration costs and desired profit.

There is also one other principle in Insurance to allude to at this point. It is the concept of '*Insurable Interest*'. This states person A can only take out insurance on an asset if he stands to financially lose out should that asset be destroyed, damaged or lost. In other words there must a financial link or interdependency between the 2 entities. This is true also for life insurance where a wife can insure her Husband's life. This principle goes back to the historical origins of Insurance and was incorporated to ensure the Insurance contract did not resemble gambling, and could also not be easily subjected to fraud. The principle of Insurable Interest also states that the '*insurable interest*' need only be present at the inception of the contract. If the '*insurable interest*' ceases at some future point in the contract life then the contract is still valid and should run its course.

Any genuine study on the subject of insurance or indeed other financial concepts cannot be truly complete without at least a basic appreciation of the historical context and origins of the subject matter. Quite often history holds the key to the genuine purpose behind such concepts and therefore is part of the research in assessing their Islamic validity. Indeed the technical smokescreen of giant modern financial corporations is enough to confuse even the most astute of analysts.

HISTORICAL ORIGINS OF INSURANCE

Throughout history mankind has exhibited the admirable spirit of co-operation and mutual help at the time of need. Even without the benefit of the 'law of large numbers' explained above, mankind has devised ways in which risks and perils can be managed. There are countless examples dating back as far as the Roman Empire where burial clubs were arranged to pay for burial costs at a member's death. A similar principle was adopted in England in the seventeenth century to provide medical aid. During the same century numerous efforts were exerted by the church to collectively raise funds in aid of those affected by the great fire of London. Also, in the seventeenth century international trade gave rise to specialist insurance institutions to cater for sea-faring risks being undertaken. Without the presence of such Insurance arrangements, import/export business would have been a fraction of what it ultimately succeeded into. These early arrangements later led to the birth of institutions such as the Lloyds of London syndicates.

In the 19th Century, various factors coincided to generate a desperate need for widespread insurance. New means of transport had been developed; populations in the cities soared and production of goods both for domestic and foreign use was at an all-time high. It truly was an industrial revolution. This also meant though that the frequency of accidents and deaths rose immeasurably. As such a low-cost national collective system to compensate the victims or their families had to be developed.

A petition to insure against fire was put forward to the King of England in 1663 and again in 1669, but was rejected. Even when it was finally approved in 1674, it was still not implemented as planned. In Scotland though, success for the social insurance industry was achieved through the establishment of the Scottish Widows Fund in 1815. The objective behind the fund was to look after the families of deceased churchmen. There are also other examples of Dr Bourbon's scheme which was started after the fire of London to insure commercial buildings and residential houses.

As time went by, more and more institutions developed. Some were designed exclusively for socially benefit, whilst others were set-up by entrepreneurs primarily for personal profit, with insurance simply being a means to the profitable end. The interesting observation though is that as time went by, the private profit based Insurance firms grew in size and membership, whilst the social not-for-profit co-operatives were somewhat slower in growth and were heavily restricted to certain parts of the country and certain types of risks. Worse still, greedy capitalists quickly noticed the potential for abuse and extortionate financial gains via the Insurance industry. Unfortunately this opportunity was seized upon and for the best part of 150 years, greedy entrepreneurs made a mockery of the social benefits of insurance. They subjected society to extremely high premium rates, thereby pocketing huge profits.

The 19th Century spirit of individualism and competitiveness had given rise to a new capitalist culture in the form of insurance. Eventually the masses decided that enough was enough and various protests and revolts caused the state to intervene and start regulating the industry. Even as early as the 1774 the Gambling Act in England laid down stringent measures to curb gambling in the name of Insurance. Late in the 19th century, in light of the protests against private insurance, many insurance firms were handed by into public ownership.

As mentioned above, private insurance companies (owned by shareholders, primarily for profit) rapidly out-paced the growth of social co-operative type insurance organisations (owned by policy holders for their mutual gain). This seems a peculiar result as the social organisations had a habit of paying any year-end profits back to the members, and therefore were ultimately a better deal for everyone. Naturally then, one would want to investigate the reasoning behind why they lost the race against the big capitalist corporations.

There are 2 main factors which led to the above outcome. Firstly, the very nature of insurance is that it must be carried out on a large scale, thereby obtaining maximum benefit from the law of large numbers (and hence the pricing of premiums). Co-operatives and social insurance were usually restricted to areas and risk-types. In fact even the manpower running these institutions was often voluntary. It was simply not possible to roll this model out nationally to cover the population. As such, the co-operatives were relegated into second place and restricted to operating in one area. Secondly, due to the ill-effects of 18th and 19th century capitalists exploiting insurance, a wave of regulation had been introduced to curb sharp practice and therefore corporate institutions were more customer-orientated. As time has passed by and democracy to a greater degree than before has dominated the political landscape, the regulation of commercial insurance firms has become tighter and tighter. The potential for exploitation of the masses on the scale seen before has been eliminated.

POTENTIAL ISLAMIC OBJECTIONS TO INSURANCE

Traditional Ulema have forwarded various objections to both the concept of insurance and the contract of insurance. They have ultimately concluded that Insurance is not permitted due to deficiencies contained in either of the above, and sometimes even both. The following is a summary of the main objections cited, and the subsequent counter-argument by contemporary scholars. Islamic finance and Islamic jurisprudence in particular has a general axiom which is utilised in deriving rulings. The axiom is as follows;

'All is acceptable in Islam, unless it has been expressly prohibited'.

As such that above axiom dictates that a genuine flaw *must* be found in either the concept or contract of insurance from a Shariah perspective. If not, Insurance is deemed as legitimate (*similar to the principle of innocent until proven guilty*). Let us therefore analyse the various objections and counter-arguments.

Gambling

The singular most frequent objection levied against Insurance is that it is tantamount to gambling. Certain features of the insurance contract are indeed remarkably similar to gambling eg The payment of a premium is similar to the cost of a lottery ticket or a coin in a fruit machine. In addition, the receipt of an amount (sum assured) usually much greater than that paid in also bears great resemblance to winning the jackpot in a lottery, having purchased a meagre £1 ticket. The above striking similarities have led some jurists to conclude that Insurance is the same as gambling.

Gambling has been clearly prohibited in the Qur'an. Allah (SWT) in Surah Ma'idah (v 90-91) refers to the prohibition of *Maisar*. The definition of *Maisar* in pre-Islamic Arabia was to 'to court such risk which involves both the hope of gain and the fear of loss, and which is not necessarily part of the normal activities of life'. Several commentators have also expressed the opinion that *Maisar* has strong connotations of deceit and trickery attached to it. In light of the above, if Insurance is akin to Gambling then surely it is prohibited in Shariah.

Contemporary scholars who have also conducted in-depth analysis into the above objections cite the following as a counter-argument.

1. The prime evil of gambling lies squarely in the fact that the gambler wilfully seeks out risk which was not there in the first place, or if it was there, then it did not concern him specifically. Hence, bets on horses, purchase of lottery tickets, card games etc are all examples of engaging in risk which is not natural to the daily economic life of an individual. They were never a natural risk to the individual. The case of insurance though is fundamentally different. Insurance is concerned with those risks which are inherent in human life and business activities eg the risk of car theft or the risk of fire to a property. Neither of the latter is a risk which has been actively sought by the individual, as in the case of gambling. Rather, car-theft or fire are part of daily life and disrupt the flow of daily activity if they occur. Taking Insurance against them therefore does not represent a wilful action of seeking out unnatural risk, instead it is simply covering oneself against the cost of replacement should such a loss occur. The 2 scenarios on closer inspection are fundamentally different.
2. The second major difference between gambling and insurance relates to the motivations of the respective parties. The gambler clearly seeks profit, whilst the insured only desires protection against a loss should it occur. When the gambler wins he receives a sum of money which can drastically increase his wealth without commensurate effort on his part. In sharp contrast, the insured in the event of a claim is simply back to square one, where he is compensated for the loss he has *already* suffered and the Insurance proceeds will simply restore the normal state of play eg another car of similar value or compensation for the loss of a property roughly equal to the value of that property. No excess above that amount lost is normally received by the insured. Clearly the motivations and ultimate benefit of both parties is fundamentally different.
3. A third critical difference arises when we analyse the benefit to each party in the case of loss. The gambler in such a case receives nothing and is out of

pocket by the cost of the lottery ticket or the size of his bet. In contrast though the Insured has still received the cover of his asset, security and peace of mind during the period of insurance, even if a claim was not made. Clearly the Shariah does not discount such intangible benefits as security and peace of mind. Security is of paramount importance in business as it leads to stability which in turn allows for long-term planning. Without security, many ventures would fail within their initial stages.

It would appear then on closer inspection that although Gambling and Insurance have some common denominators, there is sufficient reasoning and logic to exonerate Insurance above Gambling and classify it as a fundamentally distinct entity.

Interest

The next most frequently cited objection to insurance is its involvement with interest. Clients pay premiums to insurance companies on a monthly, quarterly or annual basis. As the drawdown of these funds by claims from the general public does not bear perfect harmony with the rate of deposits, there will naturally always be a surplus of cash within the insurance company. Common sense dictates that this money should be invested rather than being left idle. In the modern-day insurance firm, these surplus funds are typically invested in interest-bearing bonds and government gilts. The insurance company cannot afford to take any real risk with the premium money as it could well be required to pay claims. As such, government securities and other fixed interest instruments are a natural home for the excess premiums. Rarely will an insurance firm invest the proceeds in equity-based investments.

The involvement therefore of insurance with interest is purely incidental. Interest is not by design any part of the concept of insurance, nor is it part of the insurance contract between insurer and insured. But it plays a role in determining premium rates as the return on premiums invested are taken into account as income to the premium pool prior to deducting expected claims and arriving at the premium level. It is similar to Interest involved on Bank funds lodged in a current account. The account holder simply places the money in the Bank with the intentions of security and accessibility. His funds however will probably be lent out on interest. Worse still the fractional reserve system operated by Banks will ensure that multiples of the money deposited will be used for haraam (impermissible) purposes (see our booklet on why Islam has prohibited Interest). The point though here is this, a current account is not deemed impermissible due to the incidental involvement of interest. Surely then can Insurance, being clear of interest in concept and contract, but only affected by it incidentally, be deemed impermissible? Either way, it is fair to say that if the excess funds were invested in a shariah-compliant manner then the insurance contract is definitely clear of any interest elements.

Some scholars have also raised the objection that Insurance is explicitly involved with interest as the compensation received from the insurance company often exceeds the premiums paid. This analysis is based upon one of the definitions of interest which *'is to receive an amount above the principal'*. Whilst this is totally true that receipt of an amount above the principal loaned is tantamount to interest. The application of this principle is confined only to loans, it does not apply to other areas of Islamic finance such as investment, where clearly the objective is to increase the principal

invested. The question then arises on the nature of the premium paid to the insurance company. Is it a loan?, if so then the proceeds received from the insurance company for sure represent an increase on the principal and therefore render the whole arrangement impermissible. Analysing the nature of the premium paid it is clearly *not* a loan to the insurer, as any loan has to be repaid. The insurer is never obliged to repay the premiums paid to the client. In fact, in its original true sense, the premium paid is like a co-operative contribution to a valuable social service. Unlike conventional interest-based deposits, the payment of the sum assured in an insurance contract bears no correlation with the total amount invested or even the timeframe of the investment. Rather the payment of the sum assured is wholly dependence upon the timing and size of the loss incurred by the insured. It bears no real similarities to a loan or interest-based investment and therefore cannot be compared to one.

Furthermore at a macro society-wide level, the total premiums paid by all persons will be equal to the total claims paid out (excluding administration expenses and profits). As such society will broadly speaking receive back what it put in.

Nature of the Insurance contract.

Just as English Law and other legal systems have firmly rooted at their commercial hearts the concepts of ‘contract law’ eg the need for an offer to be made prior to acceptance, the need for consideration on both sides etc. Similarly Islam, prior to any of the existing legal systems today has had a rich and sophisticated set of laws which govern contracts. Indeed these laws have been prescribed in the Holy Qur’an and the Sunnah of the Prophet Mohammed (SAW).

The presence of certain elements and the absence of others can make the difference between a valid or void contract in the eyes of Shariah. Leaving aside the aforementioned elements such as Gambling and Interest, the following concerns are deemed as impure elements which invalidate any Islamic contract. If the insurance contract contains any of the following, it too is invalid.

- Coercion (*ikrah*)
- Exploitation of distress
- Fraud and Cheating (*ghishsh wa ghaban*)
- Obvious indeterminacy and Hazard and ignorance likely to cause disputes (*gharar-fahish* and *Jahl Mufdi ila Niza*)
- Detriment (*darar*)
- A contract within a contract (*Safaqat –fi –Safaqat*), or a contract where the outcome is dependent upon a future event.

Our discussion so far clearly shows that the insurance contract does not contain the first 3 in the above list. It is also obvious that point 5 which is detriment is not also present in the insurance contract as it does not pose an externality to any 3rd party. The real issues then are points 4 & 6, which are concerned with uncertainty within a contract.

The Prophet Mohammed (SAW) in a number of Ahadith prohibited contracts where *Gharar* (gross uncertainty) was present. The Ahadith include the prohibition to purchase a pond at a fixed price irrespective of the quantity of fish; sale of an unborn

camel; sale of fruits in an orchard at the initial stage of fruition etc. The common denominator in all the dozen or so Ahadith stipulating the prohibition was the existence of *Gharar*. *Gharar represents a level of uncertainty which is unacceptable in Shariah as it may lead to disputes in the future between the transacting parties and as such contracts which involve this level of uncertainty cannot be entered into in the present.*

One may naturally contend that uncertainty is present in practically every human action and interaction on a daily basis. Indeed an employer cannot know with entire certainty what level of service he will receive from an employee given a certain salary. The answer here is that uncertainty does exist in all spheres of human life. Uncertainty is known as *Jahalah* in *fiqhi* terms. *Jahalah* in itself is not prohibited, partly because it is inevitable. What is prohibited though is an excessive level of *Jahalah* present within the key elements of a contract eg the price, the subject matter, delivery date etc. When *Jahalah* (uncertainty) is present to an unacceptable level in the above key areas then at that point, *Jahalah* becomes *Gharar*, and is prohibited. For the purposes of this paper the *Gharar* has been termed 'gross uncertainty'.

The central question then is - *Does insurance contain Gharar*, and if it does can the undesired effects of *Gharar* eg *disputes at a future date* be exempted from the insurance contract? With respect to the first question the traditional ulema would argue that as the insured is uncertain as to what he will receive in return for his premium paid then this is sufficient uncertainty and this *Gharar* renders the contract void. Moreover these scholars will also purport that the payment of the sum assured is contingent on a future event. The latter was also prohibited by the Prophet (SAW)

Contemporary analysts would suggest that the insured pays a premium in exchange for a service from the insurer. The service has 2 crystal clear elements. If a loss occurs eg theft/fire, then the insured is compensated to the extent of his loss. If however no loss occurs, then the insured has received security and peace of mind in exchange for his premium. Although the latter is an intangible benefit it is recognised in Shariah eg goodwill in valuing a company or paying a security firm to guard your house gives peace of mind and security, yet not necessarily any tangible visible consideration being received. Traditional jurists may argue that the security guard example is justified via an *Ijara* contract, where the security firm is hired. The reality is that the insurance firm, in essence can also be viewed in the same way.

The above though still does not resolve the issue of the outcome of a contract being dependent on a certain event. This was prohibited by the Prophet (SAW). The contemporary scholars will cite here the concepts of *illah* and *hikmah* in *fiqh*. *Illah* is the basic feature of a command whilst the *hikmah* is the wisdom underpinning that command. A simple example here will help illustrate the point. To prevent accidents a set of traffic lights have been installed at a junction. The basic feature (*illah*) is a red light which dictates that a car should stop at the lights. The latter is based upon the *hikmah* which is to avoid an accident. Now even if there is no other traffic at the junction, if the light is red, then the car at the lights will have to wait, despite no apparent danger of proceeding through the lights. That is the principle of obeying the *Illah*. Islamic jurisprudence is full of such principles and examples. However on occasion it is permissible to depart from the above procedure if the *hikmah* can effectively render the *Illah* invalid. For example if the car is the only car in the entire

area, then there is no risk of colliding with another car and as such not stopping at the lights may be allowed by the authorities.

In the case of a contract which is dependent upon a future event occurring, the basic prohibition (Illah) is due to disagreements between the parties arising at a future date, mainly due to the uncertain nature of a future incident eg the number of fish which will ultimately surface from the pond or the exact quality of fruit in an orchard when it comes to fruition. Departure from the Illah/Hikmah principle has recently been seen with Islamic mortgages when the Ijara (rental) rate has been linked to LIBOR. Initially it was argued that benchmarking to the LIBOR rate could not be permissible as it fluctuated and was not certain, thereby giving rise to Gharar. Many ulema however argued that LIBOR was a well-defined benchmark and as the purpose of eliminating Gharar was to avoid future disputes, therefore linking to LIBOR was permissible as it is a well-known, clearly defined benchmark which is not subjective. Thus as long as dispute between the parties was avoided, the fluctuation of a well-defined benchmark was permitted (even though on the surface Gharar was present in a key element of the contract).

In a similar vein, with Insurance the compensation to be paid in the event of loss of property/car is clearly defined from the outset. No arguments or disagreements should arise as the sum assured is clearly defined in writing from inception. No more or less than the sum assured can be paid out. Some ulema have thus argued that as the hikmah (avoidance of disputes) behind Gharar is not an issue in Insurance, therefore the insurance contract is perfectly valid.

Moreover, some contemporary Ulema are critical of what is perceived as the rigid classification of Islamic contracts ie Murabaha, Ijara, Modaraba etc. They argue that these contract types are based upon the circumstances prevailing in Arabia at the time of the Prophet (SAW). The insurance contract never existed at that time, and therefore to determine the legitimacy of the insurance contract by forcing it into one of the existing types of Islamic contracts is not wise. It is like forcing a round peg into a square hole. Insurance is an altogether different proposition which never existed before. As such its unique nature should be given respect and analysed separately on its merits. The concept is firmly rooted in the principle of social co-operation and mutual help. Moreover it is an indispensable form of managing risk faced by humanity. It allows for the progression of social and economic objectives creating a more stable environment for all concerned. Surely these aspirations embody the spirit of the Shariah.

TOWARDS MUTUALLY ACCEPTED SHARIAH-COMPLIANT INSURANCE

Throughout this paper we have tried to present both sides of the Insurance spectrum. The traditional view which holds that Insurance is prohibited due to the presence of elements such as Gambling, Interest and other contractual deficiencies such as Gharar (Uncertainty). We have also presented a more contemporary view which challenges the traditional assertions of gambling, Interest etc stating that they have been reached using incorrect analysis of the insurance contract. This latter group of scholars hold that Insurance as a concept is not only perfectly permissible but admirable from a Shariah point of view due to its benefit to society and its spirit of co-operation. For

this group of scholars, the key changes needed to bring present day insurance totally in line with best practice in shariah, are to invest any excess premiums in accordance with shariah, via government partnership or sharia-compliant common stock. These scholars also stress the wisdom of the state assuming the role of the insurance firm and managing all claims and premiums. That way the system will not fall prey to ruthless capitalists engaging in it purely for personal gain. Effectively, nationalising insurance would be the idea.

As for the traditional ulema, who fundamentally reject insurance, their preferred structure is very different. This group of thinkers has occupied itself with the difficult dilemma of finding a structure which can achieve the very visible benefits of insurance yet safeguard society from the perceived evils contained therein eg Gharar and Interest.

The Ulema adopting this view have forwarded the concept of *Takafol* as the answer to conventional insurance. The constituent components of a *Takafol* system are as follows;

Concept

- **Takaful** is an Arabic term which means "Guaranteeing each other". It is a system of Islamic Insurance based on the principle of ta-awun (mutual assistance) and Tabarru (Gift, Give away, donate) where the risk is shared collectively by the group on a voluntarily basis. A pact is created amongst the members or participants whom agree to jointly guarantee each other against loss or damage as defined by the pact

Basic Features

- A Waqf is established by the equity holders of the Takaful Company to compensate the beneficiaries or participants of the Takaful scheme with utmost sincerity in order to help those faced with difficulties.
- Every policy holder pays his subscription as a donation to the Waqf in order to assist those who need assistance among the participants and beneficiaries of Waqf.
- Any member or participant suffering a catastrophe or disaster would receive a certain sum of money or financial aid from the Waqf, as defined in the pact, to help meet the loss or damage suffered
- Waqf is a recognized principle in Islam. Examples include a Masjid, Hospital, Waqf al Awlad, and so on (where the beneficiaries of these are predetermined).

Operation of the Takafol Fund

- A Takaful Company is formed with the capital of investors for the purposes of investment into Halal business and to compensate the victims for various losses.
- With these two objectives, they will establish a Waqf from a portion of that capital or from the total capital as per the terms and conditions of that company mentioned in its Memorandum

- The portion of investment is based on an underlying contract of Musharakah/Mudarabah to invest in Halal modes of trades to earn Halal profit. Any ratio of profit can be determined on the basis of principles of Musharakah or Mudarabah, between the 2 entities.
- The portion of Waqf is segregated to help victims of losses and accidents as per the rules and regulations defined in the Memorandum of the Takaful Company. The ownership of this segregated amount for Waqf goes out from the ownership of the Waqif (a person who establishes Waqf), as per the rules of Waqf mentioned in Shariah.
- The policy holders of Takaful will give away an amount (or premium) as donation to that Waqf to participate in objectives of the fund being to compensate their losses as per the rules of the Takaful company.
- The Donation to the Waqf can be determined by the Takaful company on the basis of an actuarial estimate.
- The capital of Waqf fund can be invested into Halal and secured schemes of investment, and any profit and capital gain to that investment would be owned by that Waqf.
- A reserve can be created by the Waqf fund to mitigate any future losses of that Waqf.
- The Takaful company can charge a fixed fee or commission from the capital of Waqf for rendering the services of management and administration of this Waqf.
- Any surplus (Faaiz) after deduction of operating expenses and fees may be distributed to poor and/or beneficiaries of Waqf and/or reinvested in the fund again to increase reserves of the Waqf as per the rules of Takaful company.
- In cases of insufficient assets and reserves of Waqf to compensate the policy holders of Takaful, the Takful company may arrange a financing or Re-Takaful for the Waqf as per the rules of Takaful company vetted by the Shariah Supervisory board of the company.
- In case of liquidation of Waqf the assets of Waqf can be distributed among the poor and/or participants or beneficiaries of the Waqf as per the terms of the Takaful Company.
- The rules of Waqf for compensation of beneficiaries can be predetermined to decide the basis of compensation, extent or limit of compensation, procedure of claiming the compensation and pre-requisites of procuring the policy of Takaful.
- In each case it is agreed that a portion of the premium would be for investment purposes and the other portion would go to the Waqf for Takaful purposes.
- The first portion would be considered as investment on the basis of Musharkah/Mudaraba and any profit/ loss would be shared by the Policy holders and Takaful Company on pre agreed-ratios.
- At the time of maturity this investment would be redeemed On NAV basis.
- However, in this case the other portion of capital would go to Waqf fund as donation and all rules of Waqf mentioned in the Memorandum would apply for that amount.

Takaful can be used to cover

- Property e.g. house, factory, mosque, offices
- Vehicles (car, motorcycle etc..)
- Goods (For Import or Export)
- Valuables
- Health, accidents and Life

SUMMARY & CONCLUSIONS

In this paper we have analysed both the theory and contract of Insurance. We briefly also skimmed over the historical origins of insurance. Our research has yielded that Insurance undoubtedly started off as co-operative concept aimed at helping society manage everyday risks in a collective manner. This spirit of mutual help is not only acceptable in The Shariah but is in fact highly commendable. We also saw however that Insurance was grossly abused by greedy capitalists in the 18th and 19th centuries with the sole aim of profitability and very little public concern. However, we made a clear distinction between the theory behind the concept of Insurance which was proven to be acceptable, and the practical application and blatant extortion of the concept by corporate institutions in the 18th and 19th century which clearly was not in line with Shariah. We also then touched upon some of the immense regulation which has governed the Insurance industry ever since the unfortunate events above. The regulation has immensely helped to remove the previous unhealthy perceptions of greed which were inextricably linked with the Insurance industry.

Our research also focused heavily on those arguments which have been forwarded by many traditional scholars who they feel that these deficiencies render Insurance impermissible. Our analysis in this paper and subsequent conclusions were that there was nothing expressly contained in the concepts of insurance, nor in the contract of insurance to declare it Haraam. Although impure elements such as Interest were involved at certain stages, the latter had purely incidental involvement and was not at all a basic feature in the insurance contract (similar to interest on a current account with a bank). We also briefly looked at the changes to the current system proposed by those Ulema who broadly speaking, accept insurance as permissible. These Ulema feel that the insurance system would be better off run by the state with some room for private firms in niche areas. These scholars also cited that excess premiums in the coffers of an Insurance firm are obviously better invested in Shariah-compliant equities than fixed interest.

We finished our research by covering the main points of the Takaful (Islamic Insurance) system proposed by many Ulema who believe the current system of Insurance is impermissible. This system works on a Waqf basis where all the members guarantee each other in the event of a loss. The premium paid is treated as a donation, and any surplus in the fund is either given to charity or paid back to the members. This system of Takafol has been put into practice in Malaysia as well as Pakistan.

We hope and pray that this paper has progressed the discussion on Insurance, and presented succinct, precise arguments on its true nature. Any errors in this work are solely from the Author, whilst any benefit from this paper can only be from Allah (SWT). Allah knows Best!!

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